

OAH 2-0330-16644-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In Re the Petition of Bryan Hansen
and Robert Hansen, for the Concurrent
Detachment and Annexation of Certain
Land pursuant to Minnesota Statutes,
Section 414.061 (D-417) (A-7228)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Raymond R. Krause at 8:30 a.m. on Wednesday, May 10, 2006, in Courtroom 3 of the Office of Administrative Hearings, 100 Washington Avenue, Minneapolis, Minnesota. The hearing continued on two subsequent days and ended on May 12, 2006. The hearing was recorded on tape. The final written memorandum was received on May 22, 2006 and the record closed on that date.

Edward W. Gale, Esq., of the firm of Leonard, O'Brien, Spencer, Gale & Sayre, 100 S. Fifth Street, Suite 2500, Minneapolis, MN 55402, appeared representing the City of Gem Lake. Harry T. Niemeyer, Esq., of the firm of Stringer & Rohleder, 1200 Fifth Street Center, 55 East Fifth Street, St. Paul Minnesota 55101, appeared on behalf of Petitioner Bryan Hansen. Timothy W. Ridley, Esq., of the firm of Meagher & Geer, 33 S. Sixth Street, Suite 4200, Minneapolis, Minnesota 55402, appeared representing Petitioner Robert Hansen. Caroline Bell-Beckman, Esq., of the firm of Jensen, Bell, Converse & Erickson, P.A., 1500 Wells Fargo Place, 30 East Seventh Street, St. Paul Minnesota, 55101 appeared representing the City of Vadnais Heights.

STATEMENT OF ISSUE

The issue in this proceeding is whether or not the Petition for Concurrent Detachment and Annexation should be granted or denied based upon the factors set out in statute.¹ The ALJ finds that the Petition should be denied.

Based upon all of the testimony, exhibits and the record in this proceeding, the Administrative Law Judge makes the following:

¹ Minn. Stat. §§ 414.061, 414.02, subd. 3.

FINDINGS OF FACT

Procedural History

1. On January 14, 2005, Bryan Hansen, representing himself, filed a petition with the Municipal Boundary Adjustment Unit ("MBA") seeking the concurrent detachment and annexation of approximately 18 acres of property located in the City of Gem Lake, to the City of Vadnais Heights. The area proposed for detachment and annexation ("the Subject Property") is described as follows:

That part of the Southwest Quarter (SW $\frac{1}{4}$) of Section Twenty-seven (27), Township Thirty (30), Range Twenty-two (22), Ramsey County, Minnesota, described as follows: Beginning at a point on the south line of said Southwest Quarter (SW $\frac{1}{4}$), a distant of 874.07 feet west of the Southeast corner of said Southwest Quarter (SW $\frac{1}{4}$); thence North 0 degrees 03 minutes 30 seconds East 1139.59 feet more or less to the southerly line of premises described in deed recorded in the office of the Register of Deeds of Ramsey County, Minnesota in Book "1453" of Deeds, Page 152, thence westerly along the southerly line of premises described in Book "1453" of Deeds, Page 152, and said line extended to the easterly line of premises described in Deed recorded in the office of the Register of Deeds of Ramsey County, Minnesota, in Book "1454" of Deeds, page 213; thence south 50 degrees 50 minutes west, a distance of 46.61 feet; thence south 68 degrees 31 minutes west, a distance of 85 feet; thence north 72 degrees 03 minutes west, a distance of 52 feet; thence south 26 degrees 21 minutes west, a distance of 210.5 feet; thence south at right angles to the south line of said Southwest Quarter (SW $\frac{1}{4}$) a distance of 886 feet to the south line of said Southwest Quarter (SW $\frac{1}{4}$); thence east along the south line of said Southwest Quarter (SW $\frac{1}{4}$) a distance of 816.28 feet, more or less, to the point of beginning. Excepting therefrom a 40 foot wide road easement, the westerly and northerly line of which is described as follows: Beginning at a point on the south line of said Southwest Quarter (SW $\frac{1}{4}$) of said Section Twenty-seven (27), a distant 935 feet east of the South-west corner of said Section Twenty-seven (27); thence north at right angles to said south line 886 feet; thence north 26 degrees 20 minutes east, 210.5 feet; thence south 72 degrees 03 minutes east 52 feet; thence north 68 degrees 31 minutes east 85 feet; thence north 50 degrees 50 minutes east to the extended south line of premises described in said Book "1453" Deeds, Page 152. Together with an easement for road purposes, in common with others, over and across the last above-described 40 foot road easement.

2. On September 21, 2004, a resolution supporting the annexation petition of the Subject Property was passed by the City Council of the City of Vadnais Heights.²

3. The MBA set the petition on for hearing for May 3, 2005. Notice of the hearing was published in the White Bear Press and Vadnais Heights Press. The hearing was rescheduled due to a notice error for May 9, 2005. The hearing opened on May 9, 2005 and was immediately continued to an indefinite date and referred to the undersigned ALJ for hearing.

4. The ALJ set a prehearing conference for Friday June 10, 2005.

5. Prehearing conferences were conducted by the Administrative Law Judge on June 10, 2005 and December 12, 2005. The hearing was set for February 21, 2006.

6. On November 17, 2005, the City of Gem Lake filed a Motion to Dismiss based upon a Ramsey County District Court decision that found that Petitioner Bryan Hansen was not the sole owner of the Subject Property. The decision by the district court found that Robert Hansen, brother of the Petitioner had a half interest in the Subject Property. Minn. Stat. § 414.061, subd. 5 requires the signatures of all owners to a petition for concurrent detachment and annexation.

7. Robert Hansen joined in an Amended Petition and the Motion to Dismiss was denied.

8. A Notice of Hearing in this matter was issued by the Office of Administrative Hearings on January 5, 2006 and duly published.

9. On January 13, 2006, the City of Gem Lake moved this ALJ for an Order of Dismissal for failure of the Petitioner to comply with the Prehearing Order. On January 17, 2006, Petitioner Bryan Hansen filed a motion to withdraw his Petition without prejudice.

10. The Motion to Withdraw without prejudice and the Motion to Dismiss were denied and the matter set for Hearing on May 10, 11, and 12, 2006. The parties requested an extension of the statutory deadline for completion of the decision in this matter. That request was granted for good cause shown.

11. Notice of the reconvened hearing was issued and duly published.

12. On May 4, 2006 a Notice of Appearance was filed noting that Bryan and Robert Hansen would be represented by counsel at the hearing.

² Ex. 28.

13. At the hearing, the parties entered into a stipulation with regard to certain facts in this matter. The stipulation has been incorporated into these Findings of Fact. No agreement was reached between the parties as to a division of costs per Minn. Stat. § 414.12, subd. 3.

Area Characteristics

14. Gem Lake became a city in 1959.³

15. The total acreage of Gem Lake is approximately 720 acres.⁴

16. Gem Lake includes a body of water also known as Gem Lake which is approximately 25 acres in size.⁵

17. Gem Lake's northern and eastern boundaries are the Burlington Northern Railroad tracks. Its southern boundary, except for the Hoffman Corners area, is County Road E. Its western boundary is Labore Road.⁶

18. The population of Gem Lake per the 2000 census was 420 residents.⁷ The population in 1980 was 410. The population of Vadnais Heights has increased from 5,111 in 1980 to 13,500 currently.⁸

19. There are approximately 157 households in Gem Lake. There are approximately 37 businesses located within Gem Lake.⁹

20. The City of White Bear Lake abuts Gem Lake on the east and northeast. White Bear Township abuts Gem Lake on the north and northwest. Vadnais Heights abuts Gem Lake on the west and south.¹⁰ "Hoffman's Corners" is a primarily commercial area on the southeast corner of the city boundary. This area is surrounded on three sides by Vadnais Heights and White Bear Lake.¹¹

21. Interstate Highway 35 E is approximately a half mile west of Gem Lake. Highway 61 is on the eastern edge of Gem Lake. County Road E connects between Interstate Highway 35 E and Highway 61. Interstate Highway 694 is approximately one mile south of Gem Lake.¹²

22. The City of Gem Lake is largely wooded. Residential development to date has been primarily single-family homes (99.3%). This compares to White

³ Stip. 1.

⁴ Stip. 2.

⁵ Stip. 3.

⁶ Stip. 4.

⁷ Stip. 5.

⁸ Ex. 32.

⁹ Stip. 6.

¹⁰ Stip. 8.

¹¹ Ex. 43, p. 1.

¹² Stip. 9 and 10, Ex. 43, p. 3.

Bear Lake with 27.9 percent multi-family housing units and Vadnais Heights with 18.0 percent multi-family structures and 7.4 percent mobile homes. There are no public open spaces or recreational areas in Gem Lake.¹³

23. The nearest regional shopping area to Gem Lake is the Maplewood Mall, approximately three miles away. The nearest community shopping center is the Vadnais Heights City Center, one half mile from Gem Lake.¹⁴ Most of Gem Lake's commercial development is confined to the "Hoffman's Corners" area in the extreme southeast portion of the city and along Highway 61.¹⁵ There is little if any office or industrial development within the city.¹⁶

24. The nearest hospital is St. John's Hospital in Maplewood, approximately two miles distant.¹⁷

Subject Property

25. The Subject Property is approximately 17.64 acres situated on the southern border of Gem Lake with Vadnais Heights.¹⁸ The Subject Property is bordered on the south by County Road E. It is bordered on the east by the Tousley Ford automotive dealership property. The Subject Property is bounded on the west by a private road on which the Subject Property holds an easement. The Subject Property is bordered on the north by residential property owners in Gem Lake.¹⁹

26. The private road bounding the west of the Subject Property extends from County Road E to various properties to the north of the Subject Property. The private road is owned and maintained by a corporation (The South Roadowners Association of Gem Lake) formed by the property owners it serves.²⁰

27. The front approximate 11 acres of the Subject Property is zoned LDB (low-density business).²¹ It is the only parcel of land within the city that is, or ever was so zoned.²² The rear approximate six acres is zoned R1 (three acres residential lots²³). The rear six acres contain Department of Natural Resources designated wetlands.²⁴

¹³ Ex. 45, p. 7-14.

¹⁴ Stip. 11.

¹⁵ Ex. 43, p. 1.

¹⁶ Ex. 45, p.12, 13.

¹⁷ Stip 12.

¹⁸ Stip. 18, Ex. 43.

¹⁹ Ex.43, p. 1.

²⁰ Stip. 22.

²¹ Stip. No. 19.

²² Ex. 43, p. 2, Testimony of P. Emeott, Tape 5 at 2795.

²³ Stip. 20.

²⁴ Stip. 21.

28. The Subject Property has been part of Gem Lake since the city was incorporated in 1959.²⁵ The Subject Property receives no governmental services other than fire and police protection which are provided under contract by non-Gem Lake service providers.

Administration

29. Traditionally, the terms "urban" and "city" have been used synonymously by planners to connote the availability of a full range of services, including central sanitary sewer, public water, schools, higher levels of police and fire protection, a full range of housing types and densities, and significant employment opportunities. Police protection in an urban community is available 24 hours per day, 7 days per week, for example. The City of Vadnais Heights has the full range of these urban characteristics; the City of Gem Lake does not. Gem Lake has a Mayor, City Council, Planning Commission, City Clerk, Zoning Administrators, and Code Enforcement Officers. All of these positions are part-time. The Mayor and City Clerk also serve as co-zoning administrators for additional compensation. The City Council is a five-member body, directly elected by the citizens of Gem Lake.²⁶

30. Both Gem Lake and Vadnais Heights provide police protection to their residents and businesses through a contract with the Ramsey County Sherriff's Department.²⁷

31. Gem Lake provides fire protection through a contract with White Bear Lake. Vadnais Heights has its own fire department.²⁸

32. Gem Lake contracts with SEH, a private engineering firm, for its planning and engineering needs. Vadnais Heights has its own staff for these purposes but also contracts with SEH for special needs.²⁹

33. Gem Lake and a portion of Vadnais Heights are in the White Bear Lake ISD No. 624 School District.³⁰ Both Gem Lake and Vadnais Heights are in Ramsey County.

Water and Sewer

34. Gem Lake has a municipal sewer system. Approximately 44 residences and 35 businesses are connected to the city sewer system. The remaining residences are on individual septic systems.³¹ A majority of Gem Lake

²⁵ Stip. 23.

²⁶ Ex. 45, p. 4.

²⁷ Stip. 14.

²⁸ Stip. 15 and 16.

²⁹ Stip. 17, Testimony of J. Urban.

³⁰ Stip. 7.

³¹ Stip. 24.

citizens are opposed to further extensions of the Gem Lake sewer system.³² Gem Lake provides city water to Tousley Ford and municipal sewer and water to the White Bear Montessori School under a joint powers agreement with Vadnais Heights.³³ There are no existing sewer or water connections to the Subject Property. The nearest Gem Lake sewer is 200 feet from the Subject Property near the corner of County road E and Highway 61 adjacent to Tousley Ford.³⁴ The Gem Lake Comprehensive Plan calls for future sewer connections to the Vadnais Heights system when developing the commercial zone that includes the Subject Property.³⁵ The Mayor and other representatives of Gem Lake, however, insist that the only sewer connection for the Subject Property must be through the Gem Lake sewer system.³⁶ Gem Lake does not have its own municipal water supply. It contracts for water service with neighboring communities that have municipal water supply.³⁷

35. Vadnais Heights has an extensive sewer system that provides service to the residents and businesses of Vadnais Heights and to some entities outside of Vadnais Heights.³⁸ The Subject Property is bordered on the south by County Road E, beneath which is the Vadnais Heights sewer line. The Vadnais Heights sewer line has capacity for reasonable development of the Subject Property.³⁹ Connection to the Vadnais Heights sewer system would be less costly to a developer of the Subject Property than connection to the Gem Lake system.⁴⁰

Gem Lake Comprehensive Plan

36. The City of Gem Lake adopted a Comprehensive Plan ("the Comprehensive Plan") for the city in 1997.⁴¹ The Comprehensive Plan contains a section entitled "Community Goals."⁴² The Community Goals are described as "the principal guidelines for the physical development of Gem Lake" and all policies of the Comprehensive Plan should be considered supplemental to the Community Goals.⁴³

37. The relevant Community Goals as expressed in the Comprehensive Plan are: 1) The residents of Gem Lake desire to preserve and maintain a "small town" environment in a natural setting; 2) the residents of Gem Lake wish to contain future commercial development within the community; and

³² Ex. 45 App. A.

³³ Stip. 25.

³⁴ Test. of P. Emeott, Tape 5 at 2431, J.Thomas, Tape 1 at 3820.

³⁵ Ex. 45, pg. 44.

³⁶ Testimony of J.Thomas, P. Emeott.

³⁷ Testimony of P. Emeott, tape 5 at 2590.

³⁸ Testimony of G. Urban.

³⁹ Testimony of G. Urban.

⁴⁰ Testimony of J. Thomas, B. Hansen, Testimony of G. Urban, Tape 7 at 3178.

⁴¹ Ex. 45.

⁴² Ex. 45, p. 16-17.

⁴³ Id.

3) the residents of Gem Lake desire to have a low-profile government that provides only essential public services necessary for their health, safety, and welfare.⁴⁴

38. The Comprehensive Plan describes several "Principal Issues" that face the community. The relevant issues cited are: 1) "Gem Lake will seek to maintain a low-density residential development pattern. This commitment responds to substantial pressure from developers who seek to construct higher density developments."; 2) the City's intention to maintain a stance of commercial containment . . . additional commercial development would undermine the low-density character desired in the City"⁴⁵

39. Relevant land development goals and policies of the Comprehensive Plan reinforce the desire of the residents to maintain a "small-town" character.⁴⁶

40. Section 5.3.4 of the Comprehensive Plan addresses the specific policies of the Comprehensive Plan with regard to the Subject Property.⁴⁷

Fiscal Matters

41. Gem Lake has a net tax capacity of \$746,000 and a current levy of \$180,000.⁴⁸ The tax levy for Gem Lake in 2005, according to the testimony of the Mayor was \$241,000.⁴⁹ The property tax for 2005 on the Subject Property was \$4300, of which \$1100 was Gem Lake's share of the total tax.⁵⁰ The total operating budget for the City of Gem Lake is \$317,000 for 2006.⁵¹ Vadnais Heights has a net tax capacity of \$11,729,680, and a current levy of \$2,634,000.

42. If developed to its highest and best use, the property taxes on the Subject Property are estimated to be between \$300,000 and \$440,000.⁵²

Zoning/Planning

43. On September 22, 1981, the City of Gem Lake adopted Ordinance No. 40, which was the zoning ordinance for the city from that date until March, 2006.⁵³ Ordinance No. 40 states that among the principal permitted uses for the land zoned as LDB are churches and business and professional offices. The ordinance also restricts the time of operation of any permitted use to the

⁴⁴ Id.

⁴⁵ Ex. 45, p. 17-20.

⁴⁶ Ex. 45, p. 20-24.

⁴⁷ Ex. 45, p. 28-30.

⁴⁸ Exs. 32, 33.

⁴⁹ Test. of P. Emeott, Tape 5 at 2620.

⁵⁰ Testimony of B. Hansen.

⁵¹ Test. of P. Emeott, Tape 5 at 2615.

⁵² Test. of P. Emeott, Tape 5 at 2650 and 6170.

⁵³ Ex. 15.

hours of 7:00 a.m. to 7:00 p.m. Monday through Friday, including churches and synagogues.⁵⁴

44. Ordinance No. 40 was amended in March 2006.⁵⁵ The section of Ordinance 40 relating to the land zoned LDB was replaced with new language.⁵⁶ Although the Comprehensive Plan for Gem Lake specifically suggests the use of the Subject Property to be for "office park" development or "life cycle/condominium type residential uses"⁵⁷, Ordinance 40 does not permit the use of the Subject Property for residential development other than that meeting the R-2 (1 unit per acre) zoning.⁵⁸

45. As part of its process in developing the Comprehensive Plan for Gem Lake, the city undertook a survey of its residents.⁵⁹ The response to the survey shows that the citizens of the city oppose by over 97 percent, any change to the low-density residential, "rustic" environment. The survey also shows that 87 percent of the responders feel that commercial development should be contained and over 91 percent do not favor a change to the low-profile city government providing only essential services.

46. The testimony of several developers with experience in working with metro area municipalities established that Gem Lake has a reputation for being difficult to work with regarding development.⁶⁰ This reputation is corroborated by actions of the mayor and the City Council such as withholding information regarding public meetings from citizens seeking zoning changes,⁶¹ and passing zoning ordinances that allow churches and synagogues to be built but not used on weekends.⁶²

47. The City Administrator of Vadnais Heights believes that the possible permitted land uses for the Subject Property if annexed to Vadnais Heights would not be dissimilar to the uses allowed by the Gem Lake LDB zoning designation.⁶³

Metropolitan Council

48. The Metropolitan Council's current role is to review and comment on plans, addressing each plan's compatibility and conformity with regional plans and systems, with an eye toward possible adverse impacts on the regional

⁵⁴ *Id.*

⁵⁵ Ex. 24, Test. of P. Emeott.

⁵⁶ Ex. 24.

⁵⁷ Ex. 45, sec. 5.3.4, para C.

⁵⁸ Ex. 24.

⁵⁹ Ex.45, App. A.

⁶⁰ Testimony of R. McNulty, Test. of Jason Thomas, Test. of Bryan Hansen.

⁶¹ Ex A4, Test. of B. Hansen, Tr. Tape 4 at 805.

⁶² Ex.15.

⁶³ Test. of G. Urban, Tape 6 at 600, Tape 7 at 3440.

system. The Council has had the power to direct a change in the local comprehensive plan.

49. The Metropolitan Council reviewed Gem Lake's Comprehensive Plan in 1997. The Metropolitan Council adopted a report that contained the following recommendations, among others not relevant to this matter:

- 1) Inform the City of Gem Lake that its comprehensive plan is not consistent with *the Regional Blueprint* because it proposes Gem Lake will remain as quasi-rural (unsewered) and proposes no intensification of land use even though it is entirely inside the present MUSA and has good access to regional systems.
- 2) Inform the City of Gem Lake that it can adopt its comprehensive plan and that no plan modifications are required.
- 3) Encourage the city to modify its plan to provide for higher residential densities and intensification of land uses and expansion of public sewer to serve these land uses in appropriate areas of the community such as those vacant lands adjacent to County Road E.
- 4) Encourage the city to use cluster planning techniques as it develops its remaining vacant residential land which would allow more economical urbanization of the community should public sewer and water be needed in the future.
- 5) Encourage the city to work with neighboring communities in the planning and development of affordable and life cycle housing.⁶⁴

50. The Gem Lake Comprehensive Plan was adopted without modification. The Metropolitan Council has not subsequently required amendments to the Comprehensive Plan.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter through the MBA under Minn. Stat. §§ 414.09, 414.02, 414.031, and 414.12.
2. That proper notice of the hearing in this matter has been given.
3. That the subject area described in the Petition (A-7228) (D-417) is urban or suburban in character.

⁶⁴ Ex. U-5

4. That detachment of the Subject Property from Gem Lake and annexation to Vadnais Heights is not required to protect the public health, safety and welfare.

5. That detachment and annexation of the Subject Property is in the best interest of the Subject Property owners, and in the best interests of the City of Vadnais Heights.

6. That the remainder of the City of Gem Lake would not suffer undue hardship by virtue of the annexation of the Subject Property by Vadnais Heights.

7. That there would be some benefits to Gem Lake by the detachment of the Subject Property and concurrent annexation to Vadnais Heights.

8. That the proposed detachment and concurrent annexation would, on balance, not be in the best interests of the City of Gem Lake.

9. That citations to transcripts or exhibits in these Findings of Fact do not mean that all evidentiary support in the record has been cited.

10. That these conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these conclusions by reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

1. IT IS HEREBY ORDERED that the Petition for Detachment and Concurrent Annexation is DENIED.

2. IT IS FURTHER ORDERED that the costs of this proceeding are divided 50 percent to the Petitioners and 50 percent to the City of Gem Lake per Minn. Stat. 414.12, subd.3.

3. IT IS FURTHER ORDERED that the effective date of this Order is June 16, 2006.

Dated: June 14, 2006



RAYMOND R. KRAUSE
Chief Administrative Law Judge

Taped: Seven tapes no transcript prepared.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.061, 414.09, 414.12. Any person aggrieved by this Order may appeal to Ramsey County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.⁶⁵

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.⁶⁶ However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

MEMORANDUM

This is a concurrent detachment and annexation proceeding under Chapter 414 to consider a petition filed with the Municipal Boundary Adjustment Unit. Bryan Hansen filed first, seeking to have the approximately 18-acre property on the southern border of the City of Gem Lake detached from Gem Lake and annexed to the City of Vadnais Heights. He was subsequently joined in the petition by his brother and co-owner Robert Hansen.

Statutory Factors

Concurrent detachment and annexation of property by the landowner is governed by Minn. Stat. § 414.061. In arriving at a determination in such a case, the thirteen factors set out in Minn. Stat. § 414.02 subd. 3 are to be considered. The following discussion relates these factors to the evidence in this hearing record:

- a. **Present population and number of households, past population and projected population growth for the subject area.**

The City of Gem Lake has a population of approximately 420 residents. There are approximately 157 households within its city limits. Portions of the city are still undeveloped. Most of the residential and commercial development is concentrated on the eastern side of the city. The surrounding communities of White Bear Lake, White Bear Township and Vadnais Heights are substantially more intensely developed and more densely populated than Gem Lake. The communities around the City of Gem Lake have experienced substantial population growth in the last 50 years while Gem Lake has maintained a more rural character than the surrounding communities. In fact, Gem Lake has grown by only 10-30 people since 1980. The Metropolitan Council has expressed the

⁶⁵ Minn. Stat. § 414.07, subd. 2.

⁶⁶ Minn. R. 6000.3100.

need for Gem Lake to plan for and develop higher densities of residential housing and provide public water and sewer in response to the growth and urbanization of the surrounding communities. Compliance with these recommendations has not occurred.

- b. Quantity of land within the subject area; the natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs.**

The City of Gem Lake is essentially suburban in nature. The terrain is heavily wooded. The main geographic feature is the 25 acre lake, also known as Gem Lake. The lake is entirely within the boundaries of the City of Gem Lake. The City of Gem Lake is 720 acres, none of which is intensively developed urban property. The City has a gently rolling topography.

There are no physical features of the City that will prevent either detachment or annexation. However, having the immediate watershed of Gem Lake within one jurisdiction would seem to allow for more efficient and effective protection of this important community resource.

- (c) Present pattern of physical development, planning, and intended land uses in the subject area including residential, industrial, commercial, and institutional land uses and the impact of the proposed action on those uses.**

The City of Gem Lake's boundaries are adjacent to the City of Vadnais Heights on the entire south boundary of Gem Lake, the entire westerly boundary and part of the easterly boundary of Gem Lake. The southern border of Gem Lake is County Road E. That road is also part of the northern boundary of Vadnais Heights.

Most of Gem Lake is zoned for single family residential purposes. There are no multifamily housing developments, no industrial development and limited commercial development.

The Subject Property fronts on County Road E on the southern border of Gem Lake. The land to the west of the Subject Property is undeveloped and zoned R-1 residential. The land to the north is partially developed into residences and is also zoned R-1 for residences on three acre parcels. The land to the east of the subject property is zoned commercial and is currently occupied by one of the largest Ford automotive dealers in the Midwest.

The Subject Property is currently undeveloped. It consists of approximately 18 acres. The northernmost six acres contain DNR designated wetlands. The front 12 acres of the Subject Property are zoned LBD (low density business). The Subject Property is the only parcel in the City of Gem Lake so

zoned. The area to the east and southeast of the Ford dealership is commonly referred to as Hoffman's Corners. This is the main commercial area within the city limits. The Hoffman's Corner's area is served by Highway 61 and County Road E.

The pattern of development places the Subject Property squarely between substantial commercial development and three acre minimum, high value, residential development. County Road E is a high volume connector road leading from Interstate 35 to the commercial area of Hoffman's Corners and Highway 61. The land abutting this county road, including the Subject Property, will not remain rural in nature for long. Detachment from Gem Lake and annexation by Vadnais Heights will not change the planned use or the character of the Subject Property but will merely expedite the inevitable development of it.

(d) Present transportation network and potential transportation issues, including proposed highway development.

Gem Lake and Vadnais Heights are served by the same county road system and state highways. There are no significant issues with regard to transportation that bear on whether the Subject Property is in one jurisdiction or the other.

(e) Land use controls and planning presently being utilized in the subject area, including comprehensive plans, policies of the Metropolitan Council; and whether there are inconsistencies between proposed development and existing land use controls.

Gem Lake has a Comprehensive Plan developed in 1997. Although it was not consistent with the *Regional Blueprint* in several respects, the Metropolitan Council allowed the City of Gem Lake to adopt the Comprehensive Plan without amendment. The current zoning ordinances are consistent with the community goal set out in the Comprehensive Plan that Gem Lake wishes to preserve its rural feel. That goal, however, is one of the concerns of the Metropolitan Council.

Maintaining its rural appearance in the face of the intense growth and development surrounding it is at odds with the growth and development management goals of the Metropolitan Council's Blueprint. It is apparent from the very credible testimony of multiple witnesses that vague and subjective ordinances are being used by officials of Gem Lake to discourage any development that does not suit their personal interests and that the practices and policies implementing those ordinances have been at best unpredictable and at worst possibly self-serving and subject to conflicts of interests. At a minimum, Gem Lake has used its current and previous zoning ordinances to fend off development that it deems is inconsistent with the "feel" that it wishes to maintain. While there was some testimony that the zoning ordinances and

permitting processes were illegally misused, there was insufficient evidence to make specific findings of fact in that regard. What is clear is that Gem Lake has resisted and is intent on continuing to resist higher density development as suggested by the Metropolitan Council.

In fairness, few of the attempts at development have proceeded far enough through the process to have had an outright and official rejection by the City of Gem Lake. Consequently, there is no way to say definitively what would have happened should any of the proposals have come to a vote by the city council.

Vadnais Heights, on the other hand, has recognized the growth and development realities of its location. The zoning ordinances are clear and enforced professionally. It is apparent from the testimony that the owners of the subject property find Vadnais Heights a more welcoming and more efficient entity with which to work toward development than is Gem Lake.

- (f) Existing levels of governmental services being provided to the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of the services.**

The City of Gem Lake has entirely part time staff. Some are employed directly by the city and some are contract employees of private service providers. There are no public parks or other public recreational facilities. Gem Lake relies upon the White Bear Fire Department. Vadnais Heights has its own fire department. Both Gem Lake and Vadnais Heights contract with the Ramsey County Sherriff's Office for police protection.

The City of Gem Lake has a municipal sewer system. Despite the recommendations of the Metropolitan Council in 1997, the city has not brought sewer and water connections to much of its developed or undeveloped areas. The City of Gem Lake has, however, recently developed city sewer and water for the businesses and residences along Scheuneman Road on the east side of the city.

- (g) Existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems.**

There are no environmental problems in the City which cannot be resolved with the present forms of government. While the City of Gem Lake understandably has a concern with development that may have an impact on the lake's water characteristics such as quality, runoff, and flooding, both Gem Lake and Vadnais Heights are part of the Vadnais Lakes Area Waste Management

Organization (VLAWMO). This organization has authority to control any environmental threats to the lake from runoff on the Subject Property. In fact, the mayor of Gem Lake currently chairs VLAWMO.

- (h) Fiscal impact on the subject area and adjacent units of local government, including present bonded indebtedness; local tax rates of the county, school district, and other governmental units, including, where applicable, the net tax capacity of platted and unplatted lands and the division of homestead and nonhomestead property; and other tax aid issues.**

As a small city that is surrounded by other cities, Gem Lake has limited opportunities for developing its tax base. Given the large areas of the city that are zoned residential, the opportunities for commercial development are further limited. The Subject Property represents a significant amount of the city's potential for enhancing its commercial property tax base. The tax revenue to Gem Lake from property taxes on the Subject Property, if developed, would not be inconsequential. The loss of that potential for revenue would be of greater impact on Gem Lake than the corresponding increase in revenue would be to Vadnais Heights, given the size of their respective budgets.

If left undeveloped, the Subject Property generates little property tax revenue and has little impact on the budget of Gem Lake.

- (i) Relationship and effect of the proposed action on affected and adjacent school districts and communities.**

The City of Gem Lake and the City of Vадnais Heights are both within the White Bear School District. There would be no impact on the school district.

- (j) Whether delivery of services to the subject area can be adequately and economically delivered by the existing government.**

The City of Gem Lake is capable of providing the minimal levels of service that its citizens prefer. There is a real question, however, if it can and will provide the sewer and water service for the development of its remaining vacant land, including the Subject Property, on an economical and timely basis.

- (k) Analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment.**

Necessary government services can best be provided by annexation of the Subject Property to the City of Vадnais Heights. The sewer line beneath County Road E already exists and would be simple and inexpensive to connect. Importantly, the City of Vадnais Heights is willing and eager to work out development plans regarding the Subject Property, ensuring that the necessary

government services are provided fairly and in a timely manner. The long history of development issues between Gem Lake and the Petitioners calls into question whether the same can be said for Gem Lake.

(l) The degree of continuity of the boundaries of the subject area and adjacent units of local government.

The Subject Property would, if annexed, be a peninsula of Vadnais Heights jutting into and surrounded on three sides, by Gem Lake. This, in and of itself, is not a major concern. Gem Lake also has a peninsula of land that juts into Vadnais Heights and there was no testimony that this has caused any issues over the years. Furthermore, the planned land use for the Subject Property is very similar regardless of which city has jurisdiction. In reality, it is more likely that the concern of Gem Lake is that Vadnais Heights will approve development whereas Gem Lake will continue to find ways to postpone it in an effort to keep its rural feel.

(m) Analysis of the applicability of the State Building Code.

There are no issues affecting the state building code with respect to this petition.

CONCLUSIONS

Detachment of the Subject Property from Gem Lake and Annexation to Vadnais Heights Should Be Denied.

After considering the factors for incorporation in Minn. Stat. §414.02, subd. 3, the proposed action shall be ordered on finding that it will be for the best interests of the municipalities and the property owner.⁶⁷ This has been interpreted to mean that detachment and annexation must be in the best interests of both municipalities and the property owners.⁶⁸

Consideration of the statutory factors in this matter demonstrates that the detachment and annexation would benefit Vadnais Heights. It would enhance its tax base with a prime piece of developable commercial property and allow it to spread its public utilities and other chargeable costs over a larger base. The property owners would also benefit. Clearly, they see a better opportunity to get the necessary services for development from Vadnais Heights at lower costs and in a more timely manner than they can from Gem Lake. Because of Gem Lake's reputation for being difficult about permitting development, the value of the Subject Property may actually rise simply because of the annexation.

Whether it would benefit Gem Lake is a thornier question. On one hand, Gem Lake would be rid of the dilemma of how to develop the Subject Property

⁶⁷ Minn. Stat. § 414.061, subd. 5.

⁶⁸ *City of Lake Elmo v. City of Oakdale*, 468 N.W. 2d 575, 578 (Minn. App. 1991).

consistent with its zoning ordinance while preserving the rural feel of the city. In a case with many similarities, the Minnesota Court of Appeals stated:

The concurrent detachment and annexation will allow that land which is appropriate and ready for development (the subject land) to be serviced by a community that is servicing land immediately adjacent to it. It will also allow the community that wishes to remain a rural residential community to remain so.⁶⁹

The "present pattern of physical development, planning and intended land uses" of both cities makes annexation by Vadnais Heights the more logical alternative. This would allow both cities to continue to operate on the basis of their respective comprehensive plans and community goals. Granting the petition would relieve Gem Lake of the financial burden of providing water and sewer resources to the Subject Property when it is clear from its own survey that the citizens are opposed to extension of sewer and water services and their attendant costs.

On the other hand, it would clearly be a loss of potential tax base for Gem Lake to lose the Subject Property. Assuming that Gem Lake ever really allows the Subject Property to be developed, the resulting increase in property tax revenue would be significant to the comparatively small Gem Lake budget. The importance of this potential tax revenue is, however, tempered by the fact that the citizens of Gem Lake seem to prefer minimal services thus reducing the need for the revenue. Also, given its history of resistance to development, it is uncertain how far in to the future such development will be put off, leaving the revenue to be unrealized by either community.

For the detachment and concurrent annexation to be approved, there must be a finding that, after a review of the statutory factors, such action would be in the best interests of the property owners and the municipalities. If Gem Lake proceeds with reasonable zoning ordinances and enforces them in a fair, open and reasonable manner, appropriate development of the Subject Property will likely occur in relatively short order. This would be beneficial to both municipalities and to the property owners. Loss of that opportunity, at this time, would not be in the best interests of Gem Lake.

If, however, Gem Lake obstructs reasonable opportunities for development, it will likely encounter more law suits and additional petitions for detachment, which, as the mayor of Gem Lake pointed out, are expensive. Should unreasonable resistance to any development of the Subject Property occur in the future, it may be that it would be in the best financial interests of Gem Lake to detach the Subject Property so as to avoid further petitions. At that point, the balance may tip and the detachment may in fact be in the best interests of Gem Lake. Those benefits may not be as significant as the benefits to the

⁶⁹ Id.

property owners and to Vadnais Heights, but the statute does not require the benefits to be equally distributed among all the parties.

The Costs of the Detachment and Annexation Proceedings Shall Be Borne Equally Between the Petitioners and the City of Gem Lake.

When the parties are unable to agree on a division of the costs for a proceeding under Minn. Stat. § 414, the costs are to be assigned by the Chief Administrative Law Judge.⁷⁰ In this case, the petition for detachment and concurrent annexation was brought by Petitioners and opposed by Gem Lake. Vadnais Heights has played no role in the proceedings and has taken no position other than to state that it would accept the Subject Property should detachment be ordered. The costs of this proceeding shall, therefore, be divided equally between the Petitioners and the City of Gem Lake.

R.R.K.

⁷⁰ Minn. Stat. § 414.12, subd. 3.